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Lea Antony Ashfield

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EXAMINER

HAMILTON, ISAAC N

ART UNIT

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/674,852
Filing Date: September 29, 2003
Appellant(s): ASHFIELD, LEA ANTONY

**MAILED
MAR 08 2007
GROUP 3700**

Stephen C. Smith
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed November 22, 2006 appealing from the Office action mailed June 2, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct, however, it should be noted that the appellant incorrectly refers to "power pack (48)" in line 4 of this section. The "power pack" was given the reference number "46" in the figures.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

D408,246	JURATOVAC et al	4-1999
5,016,355	GASSEN et al	5-1991
5,213,913	ANTHONY, III et al	5-1993

Art Unit: 3724

3,934,344	INAGA	1-1976
4,583,291	PILATOWICZ	4-1986
2,827,932	STRUNK	3-1958
3,844,360	GREEN et al	10-1974

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 4-6, 10, 14-16 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Juratovac et al (D408,246), hereafter Juratovac. Juratovac discloses a battery operated chain saw with all of the elements described in the claim limitations. The figures clearly show a removable battery coupled to the motor in the figures. The battery and power pack is the oval shaped member shown in the figures. The electric motor lies within the vented motor housing shown in the figures adjacent to the oval-shaped battery. The center of gravity of Juratovac is located at least partially beneath the front handle as shown in the figures. The battery receiving area is on the back of the motor housing juxtaposed the oval-shaped battery and the motor housing as shown in the figures. The front-to-rear centerline is collinear with the rear handle and the battery is entirely spaced from the front-to-rear centerline as shown in figure 3. Juratovac inherently has an electrical coupling on the battery/power pack because every battery/power pack needs an electrical coupling in order to supply its power to a motor. Note the elements of the present limitations labeled below in Diagram 1.

In regards to claim 20, the power pack is located at least partially in front of the front handle when the front-to-rear centerline is in an inclined or vertical position.

Art Unit: 3724

In regards to claim 10, the configuration of the chain saw in Juratovac is the means that locates the front-to-rear chain saw center-of-gravity proximate the front handle.

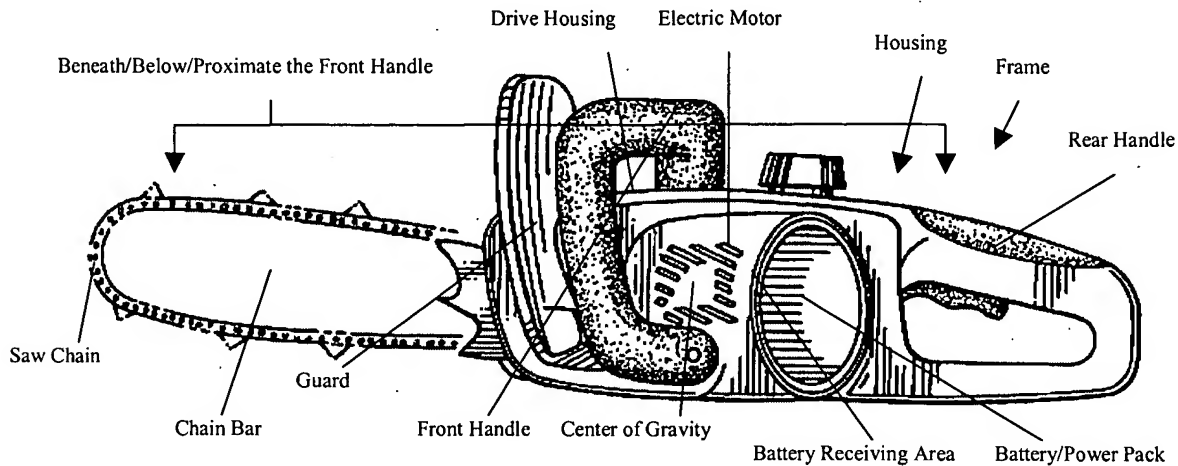


Diagram 1. Labeled elements of the present limitations.

Claims 2-3 and 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Juratovac in view of Gassen et al (5,016,355), hereafter Gassen. Juratovac discloses everything as noted above, but does not disclose a housing made of molded polymer members. However, Gassen teaches a housing made of molded polymer members in column 2, lines 11-21. It would have been obvious to provide a housing made of molded polymer member in Juratovac as taught by Gassen in order to make the chain saw lighter in weight.

Claims 9 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Juratovac in view of Anthony, III et al (5,213,913), hereafter Anthony. Juratovac discloses everything as noted above, but does not teach a mechanical latch. However, Anthony teaches mechanical latch 40. It would have been obvious to provide the power pack in Juratovac with a mechanical latch as taught by Anthony in order to further secure the power pack in place during cutting operations.

Regarding claims 7, 8, 17 and 18, Juratovac discloses all of the limitations as shown above, but does not disclose the orientation of the electrical coupling. It would have been obvious for Juratovac to locate the electrical coupling on a side other than a lateral side, and facing a forward direction in order to supply the power of the battery/power pack more directly to the motor in the motor housing juxtaposed to the battery. It has been held that shifting the location of parts is obvious to one of ordinary skill in the art if the operation of the device would not thereby be modified. *In re Japikse*, 86 USPQ 70 (CCPA 1950).

(10) Response to Argument

Appellant asserts that the member indicated as “electric motor” in Diagram 1 above is not an electric motor because Juratovac is a design patent and does not have an enabling disclosure for an electric motor. However, one of ordinary skill in the art recognizes that motors must be kept in vented housings in order to exhaust heated air created by the heat in the motor. As shown in figures 1 and 4 of Juratovac, there is only one element that has venting, therefore, the vented housing contains the electric motor.

Appellant asserts that the oval shaped member indicated as “Battery/Power Pack” in Diagram 1 above is not a battery/power pack because Juratovac is a design patent and does not have an enabling disclosure for a Battery/Power Pack. However, the title of the Juratovac reference is “Housing for a *Battery* Operated Chainsaw,” which is a disclosure that Juratovac has a battery. One of ordinary skill in the art would have interpreted the oval-shaped member shown in the figures, and labeled in Diagram 1 above, as a Battery/Power Pack because the size of the oval-shaped member is proportional to the size of the battery needed to operate other battery-powered tools, such as the battery/power pack 30 in the Anthony, III reference.

Appellant asserts that Juratovac does not disclose that the “front-to-rear chain saw center-of-gravity” is not located at least partially beneath the front handle. The Examiner interpreted “beneath” to mean in or to a lower position. This definition is taken directly from photocopies of *Merriam-Webster’s Collegiate Dictionary*, Eleventh Edition, p. 113, 2003, which the appellant supplied in the evidence appendix of this appeal brief. Appellant has argued that the definition of “beneath” is directly under. Although both definitions are acceptable, the Examiner has taken the broadest reasonable definition of “beneath” in line with section 2111. Additionally, it should be noted that the Examiner’s definition for “beneath” is listed first in the dictionary, and the appellant’s definition is listed second.

One of ordinary skill in the art would have known that the center-of-gravity lies in a plane that is below the front handle because as shown in Diagram 1 above, the front handle is the highest (vertically) element of the Juratovac chain saw save for a small portion of the guard. If the center-of-gravity were not located at least partially beneath the front handle, then the front handle would have to significantly outweigh the motor, the battery, the housing, the chain bar and the saw chain, which is impossible.

Appellant asserts that the battery and the center-of-gravity are not located at a position proximate to the front handle. However, using appellant’s own definition, which was taken from *Merriam-Webster’s Collegiate Dictionary*, of “very near: close”, Juratovac discloses that the battery and the center-of-gravity are located very near and close to the front handle. The compact design of the chain saw is such that all of the elements are very near or close to one another. Moreover, the battery and the center-of-gravity are closer to the front handle than other elements of the chain saw, i.e., the front tip of the chain bar.

Art Unit: 3724

Additionally, appellant asserts that the oval-shaped battery/power pack is not removably connected to the frame. However, since there is no plug or other electrical connector located on the frame in the figures of Juratovac, the battery must be removed in order to charge it, or replace it with a fresh battery.

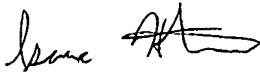
Appellant asserts that the power pack is not at least partially in front of the front handle, however, the power pack is at least partially in front of the front handle when the front-to-rear centerline of the frame is in an inclined or vertical position, such as when an operator is sawing over his head.

Appellant asserts that there is no motivation for providing the latch of Anthony on the power pack of Juratovac, however, one of ordinary skill in the art recognizes the need for a latch in order to secure a battery to a power tool.


For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Isaac N. Hamilton



Conferees:

Ashley D. Boyer, SPE 3724 

Joseph J. Hall, SPE 3723

